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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

RUFINO VALENCIA DELTORO,

Defendant and Appellant.

E046650

(Super.Ct.No. RIF135051)

OPINION

APPEAL from the Superior Court of Riverside County. Paul E. Zellerbach,  
Judge. Affirmed.

Christian C. Buckley, under appointment by the Court of Appeal, for Defendant  
and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant  
Attorney General, Gary W. Schons, Assistant Attorney General, and James D. Dutton  
and Michael T. Murphy, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Rufino Valencia Deltoro was charged with possession of a controlled substance for sale (Health & Saf. Code,<sup>1</sup> § 11351, count 1), being under the influence of a controlled substance (§ 11550, subd. (a), count 2), and possession of drug paraphernalia (§ 11364, count 3). He moved to suppress the prosecution's evidence against him, contending it was the product of an unlawful detention and search. (Pen. Code, § 1538.5.) The trial court denied the motion. A jury then found defendant guilty as charged in counts 2 and 3, and found him guilty of possession of heroin as a lesser included offense of possession of heroin for sale, in count 1. (§ 11350.) Defendant admitted that he had sustained one prior strike conviction (Pen. Code, §§ 667, subds. (c) & (e)(1), 1170.12, subd. (c)(1)) and one prior prison term (Pen. Code, § 667.5, subd. (b)). The trial court granted defendant's *Romero*<sup>2</sup> motion as to his prior strike conviction and then sentenced him to three years in state prison.

On appeal, defendant contends the trial court abused its discretion in denying his motion to suppress evidence since his detention was unduly prolonged, and the warrantless search of his room was unlawful. We affirm.

#### FACTUAL AND PROCEDURAL BACKGROUND

The following statement of facts is derived from the hearing on the motion to suppress: On February 20, 2007, Officer Michael O'Boyle was part of the Police and

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<sup>1</sup> All further statutory references will be to the Health and Safety Code unless otherwise noted.

<sup>2</sup> *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497.

Corrections Team (PACT) of the Riverside Police Department. The PACT conducted parole and probation searches and looked for subjects on parole and probation. A PACT was comprised of four officers and a supervisor. That day, Officer O'Boyle and his PACT were looking for a parolee at large named Sergio Deltoro (Sergio). They went to his address on record. There were three structures on the property, including a barn. Some team members checked the main house and informed the rest of the team there was a probationer living in the main house. Officer O'Boyle and another officer checked the second structure and the barn. The barn had no doors, but was just open. It was a two-story structure with open "tack rooms" on either side, on the bottom floor. They found defendant asleep in one of the tack rooms. Officer O'Boyle saw a glass methamphetamine pipe and empty plastic baggies in plain view on the dresser next to defendant's bed. Officer O'Boyle had a picture of Sergio, and defendant looked very similar to him. They woke up defendant, and he explained that Sergio was his twin brother and that Sergio was on parole but had not been checking in with his parole officer. Defendant did not have a picture identification, but he provided Officer O'Boyle with a parole discharge card. Officer O'Boyle ran a records check on defendant's name (Rufino Deltoro), and it indicated there was a misdemeanor warrant under his name. The police dispatcher also informed Officer O'Boyle that the records showed both brothers had used each others' names as aliases. The officers handcuffed defendant because they did not know if he was Sergio. To determine whether defendant was Sergio or Rufino, Officer O'Boyle requested that a mobile fingerprint machine be brought to the barn

location. Officer O'Boyle thought the fingerprint machine was the best option for determining defendant's identity.

The officers waited with defendant in the room for about 30 minutes for the fingerprint machine to arrive. When it came, the officers took defendant outside. They took off the handcuffs so that he could be fingerprinted. The process took about 20 minutes. For some reason, however, defendant's fingerprints were unreadable, so the fingerprint results were inconclusive. Once Officer O'Boyle realized he was not going to learn defendant's identity from the machine, he put the handcuffs back on and called Sergio's parole officer. Defendant informed Officer O'Boyle that he (defendant) had a mole on his face, but Sergio did not. Officer O'Boyle asked Sergio's parole officer about the mole, and the parole officer confirmed that Sergio did not have a mole. Since the person with Officer O'Boyle had a mole, Officer O'Boyle concluded that defendant was telling the truth that he was not Sergio, but was Rufino.

Officer O'Boyle then walked defendant to his police car and took the handcuffs off. Defendant started flailing his arms and acting in a strange manner. He reached into his jacket to get some cigarettes. Defendant started to walk away, so Officer O'Boyle asked him to walk back and remain at the car. At that point, Officer O'Boyle wanted to wait and talk to his supervisor about what to do with defendant, since defendant had a misdemeanor warrant and the methamphetamine pipe was found in his room. The rest of the police team was still dealing with the people in the main house. Defendant complied and waited by the police car. Officer O'Boyle received a telephone call, so he kept his

eye on defendant while he answered the telephone. Within five minutes of defendant's handcuffs being removed, another officer found a piece of plastic with approximately 7.2 grams<sup>3</sup> of heroin on it, on the ground near the place defendant was standing. Officer O'Boyle did not see any heroin on the ground when he first approached that area with defendant. Officer O'Boyle then told his supervisor what had been found, and the supervisor asked the officers to search inside defendant's room in the barn to get the pipe and see what else was in the barn. Officer Eric Hibbard went back to defendant's room and found a small piece of plastic with heroin residue on it. The plastic in the room matched the plastic that was found outside. The officer also found two weight scales and defendant's cell phone. Based on all the evidence found, defendant was arrested.

At the suppression hearing, defendant argued to the court that the detention was unreasonably prolonged. He asserted that the police did not try to ask the people at the scene to identify him, and that Officer O'Boyle did not call any parole officer sooner but instead chose to wait half an hour for the fingerprint machine to arrive. Defendant argued that because the detention was too long, the evidence found as a result of the search was fruit of the poisonous tree.

The prosecutor responded that because the police were searching for someone who was on parole with search terms, such search terms allowed the police to search any area in the property where the parolee would have access, including the parolee's brother's room (i.e., defendant's room). The prosecutor further argued that the investigation was

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<sup>3</sup> Other parts of the record indicate that it was 7.34 grams of heroin.

geared toward identifying defendant, who looked very much like the parolee the police were searching for. He also argued that it would have been reasonable for the police to rely on information gathered from other suspects at the scene, and that it was reasonable for Officer O’Boyle to use the fingerprint machine. After the fingerprint machine results were inconclusive, Officer O’Boyle resorted to another source—Sergio’s parole officer. After O’Boyle determined that defendant was not Sergio, defendant was asked to stay because there was still an investigation going on inside the main house. The prosecutor further contended that when the heroin was found on the ground near the place defendant was standing, there was probable cause to arrest him for possession of that heroin. Moreover, the subsequent search of his room was not in violation of his Fourth Amendment rights since Officer O’Boyle saw the methamphetamine pipe in plain view initially, and that “could have given the officers a right to arrest [defendant] which would have led to a lawful search incident to arrest.” The prosecutor explained that, even though defendant was outside by the police car, the area inside his room was clearly within his dominion and control the entire time prior to that, when the methamphetamine scales were found.

The court stated that its role in ruling on the motion to suppress was to determine whether or not the officers had sufficient probable cause to conduct the search and/or detain defendant. The court characterized the situation as “very unique and unusual” since the parolee whom the police were originally looking for was defendant’s twin brother. The court noted it was important to remember that other officers on the premises

had contacted a probationer in the main house who was currently on probation with search terms. Then, once Officer O'Boyle made contact with defendant, he was in plain view of the methamphetamine pipe and the two baggies with residue in them. At that point, Officer O'Boyle had probable cause to arrest defendant. The court agreed that defendant was detained for an arguably lengthy period of time. However, the court focused on whether the conduct of the officers was wrong under the circumstances. The court found it reasonable for the police not to rely on the people in the main house to identify defendant. Assuming hypothetically that the police thought defendant was Sergio, the court found it expeditious for the police to have the fingerprint machine brought to the location, rather than transporting the suspect to a facility. When that was unsuccessful, it was reasonable for the police to call Sergio's parole officer. Then, once the heroin was found on the ground, the police had probable cause to continue to detain defendant and to search his room, since they had already seen the methamphetamine pipe and baggies there. The court concluded that, given the unusual nature of the circumstances, the officer's actions were reasonable. The court denied the suppression motion.

### ANALYSIS

#### The Trial Court Properly Denied Defendant's Motion to Suppress

Defendant argues the trial court erred in denying his motion to suppress the physical evidence found because the discovery of those items was the product of an unlawfully prolonged detention. He also contends the warrantless search of his room was

unlawful because it was not incident to his arrest. He concludes that all evidence found as a result of the detention and search should have been suppressed. We disagree.

*A. Standard of Review*

In reviewing the denial of a motion to suppress evidence, “[w]e defer to the trial court’s factual findings, express or implied, where supported by substantial evidence. In determining whether, on the facts so found, the search or seizure was reasonable under the Fourth Amendment, we exercise our independent judgment. [Citations.]” (*People v. Glaser* (1995) 11 Cal.4th 354, 362.)

*B. The Detention Was Reasonable*

Defendant argues that, even though he had provided identification and explained the “differentiating presence of a mole on his twin brother,” the officers chose to detain him for over an hour to determine his identity. Defendant claims that “[t]he officers chose to extend the detention, and that choice was legally invalid.” We disagree.

An investigatory detention exceeds constitutional bounds when “‘extended beyond what is reasonably necessary under the circumstances which made its initiation permissible.’ [Citations.]” (*People v. McGaughan* (1979) 25 Cal.3d 577, 586.) In assessing whether a detention is unduly prolonged, a reviewing court should “‘examine whether the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly, during which time it was necessary to detain the defendant. [Citations.]’” (*People v. Williams* (2007) 156 Cal.App.4th 949, 959.) We must look at the totality of the circumstances of each case. (*Id.* at p. 958.)



Here, the detention was not unduly prolonged. Officer O’Boyle pursued his investigation in a “‘diligent and reasonable manner.’ [Citation.]” (*People v. Williams, supra*, 156 Cal.App.4th at p. 960.) He was confronted with the rare circumstance of a person claiming to be the twin brother of the parolee he was looking for. The detention was necessarily prolonged because defendant looked very similar to a photograph of the parolee, and defendant was unable to produce a picture identification. Defendant provided Officer O’Boyle with a parole discharge card, and when Officer O’Boyle ran a records check on defendant’s name, it indicated there was a misdemeanor warrant under the name Rufino Deltoro. The police dispatcher also informed Officer O’Boyle that the records showed that Sergio and defendant used each other’s names as aliases. Officer O’Boyle handcuffed defendant, since he did not know if defendant was Sergio or not. Officer O’Boyle thought the fingerprint machine was the best option for determining defendant’s identity. The machine arrived within 30 minutes, and the process took another 20 minutes. When the results of the fingerprint machine were inconclusive, Officer O’Boyle then decided to call Sergio’s parole officer. Officer O’Boyle’s actions were entirely reasonable.

Although Officer O’Boyle could have taken what defendant refers to as “the reasonable step” of calling Sergio’s parole officer first, there was nothing unreasonable about the decision to use the fingerprint machine to try and identify defendant. Certainly, nothing in the record suggests that Officer O’Boyle was trying to extend the detention by choosing to use the fingerprint machine first. There is no indication that he knew it

would take 30 minutes for the fingerprint machine to arrive at the location. Moreover, although defendant claims the “simple call [to Sergio’s parole officer] was all that was necessary to confirm [his] identity,” there was no guarantee that Officer O’Boyle was going to reach the parole officer immediately, or that the parole officer would be able to immediately confirm that defendant was not Sergio.

Under the circumstances, we cannot say that the detention “extended beyond what is reasonably necessary” (*People v. McGaughran, supra*, 25 Cal.3d at p. 586) to determine defendant’s identity. The detention was not unlawfully prolonged.

*C. The Search of Defendant’s Room Was Justified*

Defendant further argues that the search of his room after the police found the heroin on the ground was improper because it was not based on exigency<sup>4</sup> and was not incident to a lawful arrest. Defendant is apparently correct that the search was not incident to arrest. Officer O’Boyle testified that defendant was not arrested until *after* Officer Hibbard went back to the room to get the pipe, scales, and other items. Nonetheless, the Fourth Amendment did not prohibit the search of defendant’s room.

We first note that “[t]he touchstone of all Fourth Amendment determinations is reasonableness. [Citations.] . . . ‘Reasonableness, in turn, is measured in objective terms by examining the totality of the circumstances. [¶] In applying this test we have

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<sup>4</sup> Defendant makes no other reference to exigency; thus, we will not address this contention.

consistently eschewed bright-line rules, instead emphasizing the fact-specific nature of the reasonableness inquiry.’’ (*People v. Manderscheid* (2002) 99 Cal.App.4th 355, 360.)

Here, Officer Hibbard went back to defendant’s room to seize the methamphetamine pipe, which Officer O’Boyle had seen on the nightstand during the initial contact with defendant in his room. Officer O’Boyle also saw the empty plastic baggies with residue on them during the initial contact. It is undisputed that the methamphetamine and plastic baggies were in plain view. Under the plain view doctrine, “if police are lawfully in a position from which they view an object, if its incriminating character is immediately apparent, and if the officers have a lawful right of access to the object, they may seize it without a warrant.” (*Minnesota v. Dickerson* (1993) 508 U.S. 366, 375.) Thus, it was entirely reasonable for the police to go back to defendant’s room to seize the methamphetamine pipe and empty plastic baggies and to search for any other incriminating evidence, especially after the officer found the heroin on the ground near defendant. When the officers went back to search defendant’s room, they also found two scales, defendant’s cell phone, and the small piece of plastic with heroin residue on it which matched the plastic that was found outside.

Even assuming, *arguendo*, that the search of defendant’s room was unlawful, defendant would not be entitled to reversal of any of his convictions. He was convicted of possession of heroin (§ 11350, count 1), being under the influence of a controlled substance (§ 11550, subd. (a), count 2), and possession of drug paraphernalia (§ 11364, count 3). The possession of heroin conviction was based on the 7.2 grams of heroin

found on the ground outside near the place defendant was standing. The conviction in count 2 was based on the test results of a blood sample taken from defendant after his arrest. The toxicologist who tested the sample testified that methamphetamine was found in defendant's blood and that, based on the amount found in the blood, defendant would have been under the influence. Since the convictions in counts 1 and 2 were not based on evidence found in defendant's room, no reversal is required on the ground of the alleged unlawful search. The count 3 conviction was based on defendant's possession of the methamphetamine pipe. Although the methamphetamine pipe was seized from defendant's room, its seizure was lawful under the plain view doctrine. (See *ante.*)

In sum, the police pursued their investigation in a reasonable manner. Thus, the court properly denied the motion to suppress.

#### DISPOSITION

The judgment is affirmed.

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HOLLENHORST

J.

We concur:

RAMIREZ

P.J.

MILLER

J.